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LAPMASTER INTERNATIONAL LLC

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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10 MASON AND DIXON
INTERMODAL, INC.,

11 Plaintiff,

12 v.

13 LAPMASTER INTERNATIONAL
LLC and HARTFORD INSURANCE
14 CO.,

15 Defendants.

16 LAPMASTER INTERNATIONAL,
17 LLC,

Counter-Claimant, .

18 v.

19 MASON AND DIXON
INTERMODAL, INC.,

20 Counter-Defendant

Case No. CV-08-1232-MEJ

**ANSWER OF DEFENDANT
LAPMASTER INTERNATIONAL
LLC TO MASON AND DIXON
INTERMODAL, INC.'S
COMPLAINT FOR
DECLARATORY JUDGMENT;
AND LAPMASTER
INTERNATIONAL LLC'S
COUNTERCLAIMS AGAINST
MASON AND DIXON
INTERMODAL, INC.**

DEMAND FOR JURY TRIAL

21
22 Defendant LAPMASTER INTERNATIONAL LLC ("Lapmaster" or
23 "Defendant"), answers the Complaint of Mason and Dixon Intermodal, Inc.
24 ("MDII") and alleges Counterclaims as follows:

25 **ANSWER TO "JURISDICTION AND VENUE"**

26 1. Defendant denies each and every allegation in the Complaint that is not
27 expressly admitted herein.
28

2. Answering Paragraph 1, Defendant admits the allegation in that Paragraph.

3. Answering Paragraph 2, Defendant admits the allegation in that Paragraph.

4. Answering Paragraph 3, Defendant admits the allegation in that Paragraph.

ANSWER TO "PARTIES" ALLEGATIONS

5. Answering Paragraph 4, Defendant lacks sufficient information or belief to admit or deny the allegations as to MDII, and on that ground, denies the allegations.

6. Answering Paragraph 5, Defendant admits the allegations in that Paragraph.

7. Answering Paragraph 6, Defendant admits the allegations in that Paragraph.

8. Answering Paragraph 7, Defendant admits the allegations in that Paragraph.

9. Answering Paragraph 8, Defendant admits the allegations in that Paragraph.

10. Answering Paragraph 9, Defendant admits the allegations in that Paragraph.

11. Answering Paragraph 10, Defendant denies the allegations insofar as the allegation is not accurate. Hartford, after indemnifying its insured, Lapmaster International, LLC ("Lapmaster"), is subrogated to the rights of Lapmaster pursuant to the doctrines of contractual and equitable subrogation. Lapmaster is seeking recovery of its own damages as set forth in its Counter-Claim.

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ANSWER TO "BACKGROUND ALLEGATIONS"

12. Answering Paragraph 11, Defendant denies the allegations. In December, 2007, the Machines were shipped by Hamai Co., Ltd. in Tokyo, Japan from the Yokohama, Japan port. *See* Nippon Express Waybill ("Port of Loading"), a true and correct copy of which is attached as Exhibit A and incorporated by reference. The place of delivery was Oakland, California. *See* Exhibit A referencing "Port of Discharge" and "Place of Destination".

13. Answering Paragraph 12, Defendant admits that Nippon Express issued the Waybill, but lack sufficient information or belief to admit or deny the remaining allegations, and on that ground, denies the allegations.

14. Answering Paragraph 13, Defendant denies the allegations. Nippon Express was not involved in arranging for the ground transportation in California.

15. Answering Paragraph 14, Defendant denies the allegations.

16. Answering Paragraph 15, Defendant denies the allegations.

17. Answering Paragraph 16, Defendant lacks sufficient information or belief to admit or deny the allegations as to who prepared the Waybill, and on that ground, denies the allegations.

18. Answering Paragraph 17, Defendant admits the allegations in that Paragraph inasmuch as MDII transported the Machines from the Port of Oakland. However, the transportation was never completed because MDII trucks negligently crashed into overpasses in Oakland, California.

ANSWER TO "COUNT ONE"

19. Answering Paragraph 18, Defendant incorporates by reference their answers to all Paragraphs above.

20. Answering Paragraph 19, Defendant denies the allegations.

21. Answering Paragraph 20, Defendant denies the allegations.

22. Answering Paragraph 21, Defendant denies the allegations.

1 23. Answering Paragraph 22, Defendant admits that Plaintiff has requested
2 a judicial determination of the rights and duties of the parties. Defendant denies the
3 remaining allegations in Paragraph 22, and specifically denies that MDII's liability
4 is limited to \$500.00 for each Machine MDII permanently damaged.

5 **ANSWER TO "COUNT TWO"**

6 24. Answering Paragraph 23, Defendant incorporates by reference their
7 answers to all Paragraphs above.

8 25. Answering Paragraph 24, Defendant denies the allegations. MDII
9 knew or should have known of said dimensions. Third-Party Defendants knew and
10 communicated to MDII the dimensions of the Machines.

11 26. Answering Paragraph 25, Defendant denies the allegations. Third-
12 Party Defendants knew and communicated to MDII the dimensions of the Machines.
13 MDII, as a "motor carrier engaged in the performance of intermodal trucking
14 services," knew or should have known the loads it was carrying exceeded the height
15 of the overpasses. Also, after the first truck crashed into an overpass, MDII should
16 not have allowed the other truck carrying the other machines to take the same route.
17 MDII actions/inactions were the direct cause of the impact between the Machines
18 and the overpasses.

19 27. Answering Paragraph 26, Defendant denies the allegations. Third-
20 Party Defendants knew and communicated to MDII the dimensions of the Machines.
21 MDII, as a "motor carrier engaged in the performance of intermodal trucking
22 services," knew or should have known the loads it was carrying exceeded the height
23 of the overpasses. Also, after the first truck crashed into an overpass, MDII should
24 not have allowed the other truck carrying the other machines to take the same route.

25 28. Answering Paragraph 27, Defendant denies the allegations.

26 29. Answering Paragraph 28, Defendant denies the allegations, and
27 specifically denies that they are responsible to indemnify and reimburse MDII for
28

1 the physical harm, damage, and liability caused by MDII's transport of the
2 Machines, and denies that MDII's liability for damage to each machine is limited to
3 \$500.00.

4 **AFFIRMATIVE DEFENSES**

5 FIRST AFFIRMATIVE DEFENSE

6 (Contractual Liability)

7 Under the terms of the written agreements between Plaintiff and Defendants,
8 Plaintiff is not entitled to a declaration of non-liability or to any defense and
9 indemnity from Defendants. Instead, under the terms of the agreements, Defendants
10 are entitled to recover from Plaintiff for cargo damage and other damages, losses,
11 costs, and expenses arising out of the matters referred to in the Complaint.

12 SECOND AFFIRMATIVE DEFENSE

13 (Failure to Safely Deliver Cargo)

14 Under the agreements, Plaintiff was required to use due diligence to provide
15 safe transport and delivery of the cargo from Oakland, California to Fremont,
16 California. Plaintiff failed to use such due diligence, failed to perform the terms and
17 conditions of the agreements, failed to safely deliver the cargo, and damaged the
18 cargo through its own conduct and/or the conduct of its agents or subagents, all in
19 violation of requirements of the agreements and applicable laws.

20 THIRD AFFIRMATIVE DEFENSE

21 (Limitation of Liability Not Applicable)

22 Plaintiff is not entitled to limitation of liability under the carriage of Goods by
23 Sea Act, ("COGSA"), 46 U.S.C. §§ 1300, et seq., with regard to the damages
24 claimed by Defendants.

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1 FOURTH AFFIRMATIVE DEFENSE

2 (Failure to State a Cause of Action)

3 Defendant alleges that the Complaint in its entirety fails to state facts
4 sufficient to constitute a cause of action as against these answering Defendants.

5 FIFTH AFFIRMATIVE DEFENSE

6 (Liability for Acts of Agents or Subagents)

7 Plaintiff is responsible in contract and tort for all damage to cargo and other
8 damages, losses and expenses resulting from its conduct.

9 SIXTH AFFIRMATIVE DEFENSE

10 (Negligence of Principal or Agent)

11 Plaintiff, and/or its agents or subagents, failed to exercise due care in the
12 transportation of the cargo, which proximately caused the damage to the cargo, and
13 the other damages, losses and expenses referred to in the Complaint.

14 SEVENTH AFFIRMATIVE DEFENSE

15 (Negligence or Fault of Third Parties)

16 The damage to cargo and other damages, losses and expenses referred to in
17 the Complaint were proximately caused by, or contributed to, by the conduct of
18 third parties for which Defendant is not responsible.

19 EIGHTH AFFIRMATIVE DEFENSE

20 (Carrier Burden as to Load and Stowage)

21 The cargo was received by Plaintiff from the shipper in apparent good order
22 and condition. The cargo was damaged en route from Oakland to Fremont in two
23 separate accidents. The cargo was damaged and destroyed. Defendants have
24 therefore established a *prima facie* case of liability, and Plaintiff has the burden of
25 proof to demonstrate any alleged defects in loading or stowage.

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1 NINTH AFFIRMATIVE DEFENSE

2 (Proper Description of Cargo)

3 The Waybill and Import Dispatch properly identified the cargo and its
4 measurements. The cargo was properly marked. Plaintiff, and its agents or
5 subagents, were therefore on notice at all times as to the nature of the cargo and the
6 precautions required by the carrier.

7 TENTH AFFIRMATIVE DEFENSE

8 (Contributory or Comparative Fault of Carrier)

9 The cargo damage and the damages, losses and expenses referred to in the
10 Complaint were proximately caused, wholly or in part, by the negligence or fault of
11 MDII, and/or its agents or subagents.

12 ELEVENTH AFFIRMATIVE DEFENSE

13 (Lack of Causation)

14 No acts, omissions or other conduct of Defendants, or of any other persons or
15 parties attributable to Defendants, proximately caused or contributed to the cargo
16 damage or other damages, losses and expenses referred to in the Complaint.

17 TWELFTH AFFIRMATIVE DEFENSE

18 (Mitigation of Damages)

19 Defendants at all times acted properly to mitigate damages resulting from or
20 incurred in connection with the accident(s) referred to in the Complaint.

21 THIRTEENTH AFFIRMATIVE DEFENSE

22 (Assumption of Risk)

23 Plaintiff assumed the risk of the losses and damages resulting from the
24 accident(s) referred to in the Complaint.

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1 FOURTEENTH AFFIRMATIVE DEFENSE

2 (Improper Party and/or Absence of Indispensable Party)

3 Defendant alleges that ITG Transportation Services, Inc. and West
4 Forwarding Services are the proper party Defendants. In the event this allegation is
5 incorrect, and if affiliates or subsidiaries of Third-Party Defendants are the proper
6 parties, then there is, or may be, an improper party, absence of the real party in
7 interest, or absence of an indispensable party for assertion of Plaintiff's claims.

8 FIFTEENTH AFFIRMATIVE DEFENSE

9 (Waiver)

10 Defendant is informed and believes, and thereon alleges, that Plaintiff has
11 engaged in conduct that constitutes a waiver of rights under the contract alleged. By
12 reason of such waiver, Defendants are excused from further performance of the
13 obligations under the alleged contract.

14 SIXTEENTH AFFIRMATIVE DEFENSE

15 (Estoppel)

16 Defendant is informed and believes, and thereon alleges, that by reason of the
17 conduct of Plaintiff which constitutes a breach of contract, tortious conduct, waiver,
18 unclean hands and laches, Plaintiff is estopped to assert a right to relief against this
19 answering Defendant.

20 EIGHTEENTH AFFIRMATIVE DEFENSE

21 (Release)

22 Defendant is informed and believes, and thereon alleges, that the Plaintiff's
23 actions constitute a full release and waiver of any and all claims which may have
24 existed against this answering Defendant.

1 NINETEENTH AFFIRMATIVE DEFENSE

2 (Unjust Enrichment)

3 The Complaint is barred because the Plaintiff would be unjustly enriched if it
4 prevailed on its Complaint.

5 TWENTIETH AFFIRMATIVE DEFENSE

6 (Lack of Consideration)

7 Each of the causes of action contained in the Complaint is barred by failure of
8 consideration.

9 TWENTY-FIRST AFFIRMATIVE DEFENSE

10 (Laches)

11 Defendant is informed and believes, and thereon alleges, that Plaintiff
12 unreasonably delayed bringing suit against this Defendant, thereby prejudicing
13 Defendants' rights. Therefore, all of the equitable causes of action of the Complaint
14 are barred by the Doctrine of Laches.

15 TWENTY-SECOND AFFIRMATIVE DEFENSE

16 (Unclean Hands)

17 Defendant is informed and believes, and thereon alleges, that Plaintiff
18 engaged in inequitable conduct, which conduct constitutes unclean hands, and by
19 engaging in said conduct, Plaintiff is, therefore, barred from seeking equitable relief
20 upon such causes of action contained in Plaintiff's Complaint.

21 TWENTY-THIRD AFFIRMATIVE DEFENSE

22 (Breach of Obstruction)

23 Defendant alleges that Plaintiff is barred from recovery against this Defendant
24 because of its failure to fulfill its contractual obligations to this Defendant, which
25 duties, promises, and contractual obligations it breached and anticipatorily
26 repudiated, thereby excusing non-performances, if any, by the Defendants.

1 TWENTY-FOURTH AFFIRMATIVE DEFENSE

2 (Breach)

3 Plaintiff is barred from any recovery because of its failure to fulfill its
4 contractual obligations to this answering Defendant.

5 TWENTY FIFTH AFFIRMATIVE DEFENSE

6 (Violation of Duty of Good Faith)

7 Defendant alleges that Plaintiff's actions have not been brought in good faith
8 and are frivolous. Therefore, the Defendants are entitled to reasonable expenses and
9 attorney's fees incurred in defending this suit.

10 TWENTY SIXTH AFFIRMATIVE DEFENSE

11 (Reservation of Right to Amend)

12 Defendant hereby expressly reserves the right to supplement or amend these
13 affirmative defenses predicated upon the discovery of additional issues or facts that
14 may arise in the course of discovery in preparation for trial in this matter.

15 **RELIEF REQUESTED**

16 THEREFORE, Defendant requests the following relief in its Answer:

17 A. That the Court declare the respective rights and duties of the parties
18 under the agreements and applicable law, but deny Plaintiff any affirmative relief
19 and, instead, declare Defendant entitled to complete recovery for cargo damage and
20 other damages, losses and expenses arising out of the accident referred to in the
21 Complaint and Counterclaims;

22 B. That the Court award Defendant attorneys' fees and costs to the extent
23 allowed by the written agreements and applicable law;

24 C. That the Court declare Defendant entitled to recover from Plaintiff
25 under the written agreements and applicable law;

26 D. For costs of suit; and

27 E. For such other legal or equitable relief as the Court deems proper.
28

COUNTERCLAIMS OF LAPMASTER INTERNATIONAL LLC

Defendant and Counterclaimant, Lapmaster International LLC ("Lapmaster") alleges the following Counterclaims against plaintiff and Counter-Defendant Mason and Dixon Intermodal, Inc. ("MDII"):

JURISDICTION AND VENUE

1. Jurisdiction of these Counterclaims is based on 28 U.S.C. §§ 1331 and 1333, in that the Counterclaims relate to cargo damage and present a federal question under federal common law and/or federal statutes. This Court also has jurisdiction over the claims for declaratory relief under 28 U.S.C. § 2201. This Court also has supplemental jurisdiction over Defendants' State law claims against MDII because these claims result from a common nucleus of operative facts and relate to the federal claims alleged in the Complaint and Counterclaims.

2. Lapmaster is informed and believes and on that basis alleges that this Court also has jurisdiction of these Counterclaims based on diversity of citizenship, in that this is a civil action between citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

3. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b), in that the port of arrival of the cargo shipment was Oakland, California, within this Judicial District, and further, that the ground transportation of the Machines also occurred in this District.

4. As alleged above, the port of arrival and the interchange of equipment occurred in Oakland, California. This action is therefore properly assigned in the San Francisco or Oakland Division of this Court.

PARTIES

5. Counter-Claimant Lapmaster, is, and was at all relevant times, an Illinois corporation with its principal place of business in Mount Prospect, Illinois.

6. Lapmaster is informed and believes and on that basis alleges that Plaintiff and Counterdefendant MDII is, and was at all relevant times, a corporation organized under the laws of Michigan, with its principal place of business in Warren, Michigan.

7. Each of the Counter-Defendants was at all relevant times acting as the agent, employee, principal, joint venturer, or partner of such other Counter-Defendants and Third-Party Defendants, and at all relevant times, was acting within the course and scope of such relationship.

GENERAL ALLEGATIONS

8. Lapmaster sold a Precision Flat Lapping Machine and a Precision Flat Polishing Machine ("the Machines") to Hayward Quartz Technology, Inc.

9. The Machines were shipped from Japan by Hamai Co., Ltd. *See* Exhibit A.

10. The Machines were transported by Ocean Vessel Cosco Hong Kong from the Port of Yokohama, Japan pursuant to Waybill No. Y05F4451887 and other documents (collectively, the "agreements"). A true and correct copy of Waybill No. Y05f4451887 is attached as Exhibit A and is incorporated by reference.

11. The Machines were transported from Japan to the Port of Oakland, California.

12. At Oakland, California, Lapmaster is informed and believes and on that basis alleges that ITG Transportation Services, Inc. ("ITG") and/or World Express Shipping, Transportation And Forwarding Services, Inc. d/b/a W.E.S.T. Forwarding Services ("West") arranged for motor transport of the Machines from Oakland to Fremont, California.

13. The Waybill (Exhibit A) is not a through bill of lading and was not intended to cover the ground transportation of the Machines. The Waybill did not identify MDII, made no reference to a ground transportation carrier, and made no

1 reference to the delivery of the Machines from the Port of Oakland to Hayward
2 Quartz in Fremont, California.

3 14. On or about December 26, 2007, MDII picked up the Machines at the
4 Port of Oakland and began transporting the same to Fremont, California. *See* Import
5 Dispatch, a true and correct copy of which is attached as Exhibit B and incorporated
6 by reference.

7 15. On or about December 26 and 27, 2007, MDII negligently, carelessly
8 and recklessly operated and drove their tractor trailer trucks so as to cause the tractor
9 trailer truck and Machines, as cargo, to collide with certain overpasses on Interstate
10 880 in Oakland, California.

11 16. The negligent, careless and reckless operation of the tractor trailer
12 trucks and carriage of the cargo by MDII and its agents proximately caused damage
13 to the Machines, and other damages, losses and expenses.

14 17. Hartford issued an insurance policy to its insured Lapmaster under
15 policy number 83 UUQ RZ2879.

16 18. As a result of the two separate collisions causing damage to the
17 Machines, Lapmaster filed a claim for loss under the policy with Hartford.

18 19. The policy provided, in pertinent part, that in the event of an insured
19 loss, Hartford would be subrogated to any rights that Lapmaster might have against
20 a third party who is responsible for that loss to the extent of their payments. In
21 addition to contractual subrogation rights, Hartford has rights pursuant to equitable
22 subrogation.

23 20. Lapmaster was not, however, fully compensated under the Harford
24 policy for all claims, damages, losses, costs, expenses it incurred or suffered, or will
25 incur or suffer.

26 21. In addition, the negligent and irresponsible actions of Counter-
27 Defendant has threatened Lapmaster's business relationship with Hayward Quartz,
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1 and potentially other customers as well, which may result in the loss of business
2 opportunity, or loss of prospective economic benefits and relationships, all to
3 Lapmaster's detriment. Therefore, Lapmaster seeks from Counter-Defendant all
4 damages and losses, both direct and indirect, both past and prospective, which
5 Lapmaster has suffered or may suffer in the future, which have not been previously
6 paid by Hartford, and for which Counter-Defendant is responsible, in order to make
7 Lapmaster whole.

8 22. In addition to the foregoing, Lapmaster seeks recovery of prejudgment
9 interest on liquidated damages to the extent allowed pursuant to California law,
10 including Civil Code § § 3287 and 3288.

11 12 **FIRST COUNTERCLAIM**

13 **(Declaratory Relief)**

14 23. Counter-Claimant incorporates by reference each of its allegations in
15 the paragraphs above.

16 24. An actual controversy has arisen and now exists between Counter-
17 Claimant and Counter-Defendant regarding their respective rights and duties under
18 the agreements referred to above, and specifically, as to Counter-Defendant's
19 responsibility for the damage to the Machines and other damages, losses and
20 expenses referred to above. Counter-Claimant contends, and Counter-Defendant
21 denies, that Counter-Claimant is entitled to compensation from Counter-Defendant
22 for the damaged or destroyed Machines. Counter-Claimant further contends, and
23 Counter-Defendant denies, that Counter-Defendant is liable under the agreements
24 and the law of indemnity and contribution, for the other damages, losses and
25 expenses. Counter-Claimant requests the following specific relief:

26 (A) A declaration that Counter-Defendant is liable for all damage to
27 the Machines;

1 (B) That the Carriage of Goods by Sea Act ("COGSA") does not
2 apply to the ground transportation of the Machines from Port of Oakland to
3 Fremont, California;

4 (C) That the Waybill (Exhibit A) is not a "through bill of lading"
5 because (1) it did not contain a "Himalaya Clause" clearly identifying MDII or
6 Cross-Defendants as a covered party, and (2) the Waybill identifies the Port of
7 Oakland as the final destination, not Fremont, California where Counter-Defendant
8 was transporting the Machines, thus evidencing that the Waybill was not intending
9 to cover the ground transportation or apply to Counter-Defendant;

10 (D) That Counter-Defendant's liability is not limited to \$500.00 per
11 Machine because (1) the COGSA does not apply, and (2) Lapmaster was not given a
12 full and fair opportunity to avoid or increase the \$500.00 limitation;

13 (E) That Counterclaimant is entitled under the agreements or
14 applicable law to recover attorneys' fees and costs incurred in defense of Counter-
15 Defendant's action and in prosecuting these Counter-Claims.

16 25. Such a declaration is necessary and appropriate at this time, so that the
17 parties may ascertain their respective rights and duties with respect to the claims
18 asserted by Counter-Defendant and Counter-Claimant, and to avoid a multiplicity of
19 actions.

20 **SECOND COUNTERCLAIM**

21 **(Implied Indemnity)**

22 26. Counter-Claimant incorporates by reference each of its allegations in
23 the Paragraphs above.

24 27. Lapmaster is informed and believes and on that basis alleges it is
25 entitled to implied indemnity, based on the agreements referred to above and
26 principles of maritime and federal common law. A right to indemnity for the
27 damages, losses and expenses is implied, if not expressed, in the relationships and in
28

1 the terms of the agreements between the parties.

2
3 **THIRD COUNTERCLAIM**

4 **(Equitable Indemnity)**

5 28. Lapmaster incorporates by reference each of its allegations in
6 Paragraphs above.

7 29. Lapmaster is entitled to equitable indemnity from Counter-Defendant
8 under California law, for damages to the Machines and all other damages, losses and
9 expenses incurred by Counter-Claimant in connection with the accident alleged
10 above. Counter-Claimant is entitled to such equitable indemnity by virtue of the
11 relationship of the parties, in which Counter-Defendant, as the motor carrier of the
12 Machines from Oakland to Fremont, had control over (actual or construction) the
13 cargo and the instrumentalities of delivery, and Counter-Defendant and its agents or
14 subagents, were negligent or otherwise at fault, proximately causing the Machines
15 damage and other damages, losses and expenses alleged above.

16 **FOURTH COUNTERCLAIM**

17 **(Negligence)**

18 30. Lapmaster incorporates by reference each of its allegations in
19 Paragraphs above.

20 31. Counter-Defendant and its employees, agents and subagents, had a duty
21 to use reasonable care and take reasonable industry-wide precautions in arranging
22 for, and during, the transport of the Machine.

23 32. Counter-Defendant and its agents and subagents, were negligent in
24 their arranging and actual transport of the Machines by failing to use reasonable care
25 and take reasonable precautions such as measuring its load, selecting and using the
26 proper type of truck to carry the subject load, selecting the route for the subject
27 trucks to take, causing the Machines to collide with certain highway overpasses, and
28

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1 subsequently leaving these high precision, electronic, and expensive Machines in the
2 rain where they were further damaged.

3 33. Counter-Defendant's negligence proximately caused or contributed to
4 the Machines being damaged and the other damages, losses and expenses alleged
5 above.

6 34. Lapmaster is therefore entitled to recover damages from Counter-
7 Defendants, as the carrier of the Machines from Oakland to Fremont.

8 35. As a result of the negligence of Counter-Defendant, Lapmaster has
9 incurred, and continues to incur the monetary damages alleged herein the exact
10 amount to be proven at trial.

11 **FIFTH COUNTERCLAIM**

12 **(Negligence Per Se)**

13 36. Counter-Claimant alleges and incorporate by reference each and every
14 allegation contained above as though fully set forth herein.

15 37. On or about December 27, 2007, Counter-Defendant owed a duty of
16 care, as defined by federal, state and local statutes, rules, codes and regulations,
17 including, but not limited to California Vehicle Code § 35250 (Maximum Vehicle or
18 Load Height).

19 38. Counter-Defendant willfully or otherwise breached the duties of care
20 defined by federal, state and local statutes, rules, codes and regulations, all of which
21 were owed to the public and Lapmaster, and as evidenced by, among other things,
22 the fact that at least one of MDII's drivers was cited for transporting the load in
23 violation of law.

24 39. Lapmaster is in a class sought to be protected by the applicable federal,
25 state and local statutes, rules, codes and regulations, and the type of damages
26 suffered by Counter-Claimant are the type of harm sought to be prevented by the
27 applicable federal, state and local statutes, rules, codes and regulations.

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(Breach of Bailment Contract)

52. As a direct and proximate result of the Counter-Defendant's conduct in breaching the bailment agreement, Lapmaster sustained damages as set forth herein in an amount to be proven at the time of trial.

(Breach of Transportation Contract)

55. On or about December 27, 2007, Counter-Defendant entered into and accepted a contract for the transport of the Machines from the Port of Oakland, California to Fremont, California. The only documentation for the ground transportation between Oakland and Fremont is an "Import Dispatch," a true and correct copy of which is attached hereto as Exhibit B, and incorporated by reference.

1 56. On or about December 27, 2007, Counter-Defendant accepted the
2 Machines for transport. The transportation services rendered were for the benefit of
3 Lapmaster.

4 57. On or about December 27, 2007, MDII drivers collided with certain
5 overpasses on Interstate 880 in Oakland, California, damaging the machines beyond
6 repair.

7 58. Lapmaster was the actual and beneficial owner or legal possessor of the
8 goods and effects for which the transportation services were provided by Counter-
9 Defendant. In accordance with 49 U.S.C. §§ 13702 and 13706 and 49 U.S.C. §
10 14706, Counter-Defendant is obligated to pay for the damages caused to the
11 Machines.

12 59. Lapmaster has performed all the terms and conditions required.

13 60. Despite the timely demand for reimbursement, Counter-Defendant
14 refused to pay for the damaged Machines or for the losses (past and prospective)
15 suffered or which may be suffered by Lapmaster, and instead MDII initiated
16 litigation against Lapmaster and Hartford seeking declaratory relief under COGSA.

17 61. Counter-Defendant is liable pursuant to the terms of the agreement and
18 49 U.S.C. §§ 13706 and 13707, and 49 U.S.C. § 14706.

19 62. As a result of Counter-Defendant's breach of the transportation
20 agreement, Lapmaster suffered loss when the Machines suffered severe property
21 damage and were eventually declared a total loss.

22 63. As a direct and proximate result of the Counter-Defendant's conduct in
23 breaching the transportation agreement, Lapmaster sustained damages as set forth
24 above in an amount to be proven at the time of trial.

25 64. The unpaid amounts owed are liquidated amounts which became due
26 on specified dates; thus, Counter-Claimant is entitled to pre-judgment interest on all
27 such obligations from the dates on which they became due through the date of
28

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1 judgment.

2 **EIGHTH COUNTER CLAIM**

3 **(Negligent Interference with Prospective Economic Advantage against All** 4 **Cross-Defendants)**

5 65. Counter-Claimant incorporates by reference each of the allegations in
6 the paragraphs above.

7 66. Prior to and during all times relevant herein, Counter-Defendant was
8 aware that Counter-Claimant had existing economic relations with third parties,
9 including but not limited to its customer Hayward Quartz which had purchased the
10 Machines that were being transported at the time they were damaged and destroyed
11 as a result of the negligence of Counter-Defendant, and that Counter-Claimant also
12 had increased reputation and goodwill in the relevant community.

13 67. Counter-Defendants knew or should have known that their conduct, as
14 alleged above, would interfere with and disrupt these relationships.

15 68. As a proximate result of Counter-Defendants' conduct, Counter-
16 Claimants' relationship with its customers, including but not limited to Hayward
17 Quartz, has been, or is expected to be interfered with and/or disrupted, causing loss
18 of reputation, goodwill, and other damages to Counter-Claimants.

19
20 WHEREFORE, Counter-Claimant prays for judgment against Counter-
21 Defendant for all damages not previously compensated by Hartford, including both
22 direct and indirect losses, costs, and expenses, as well as both past and prospective
23 losses, costs, and expenses, as well as for declaratory relief, as follows:

24 A. For Declaratory Relief that MDII is liable for all damage to the
25 Machines; that COGSA does not apply to the ground transportation of the Machines
26 in California; that the Way Bill was not intended to cover ground transportation in
27 California; and that MDII's liability is not limited to \$500.00 per Machine;

- 1 B. For the amount of damages, resulting from the accident involving the
2 Machines, as proven at trial;
3 C. For costs and attorneys fees permitted by law;
4 D. For prejudgment interest as permitted by law, including, but not limited
5 to, California Civil Codes §§ 3287 and 3288; and
6 E. For such other relief as this Court deems just and fair.
7

8 **DEMAND FOR JURY TRIAL ON COUNTERCLAIMS**

9 Lapmaster International LLC hereby demands a jury trial on all Counter-
10 Claims for which jury trial is allowed by law.
11

12 DATED: April 22, 2008

GORDON & REES LLP

13
14 By: 

JOHN F. HUGHES

Attorneys for Defendant and Counter-Claimant
LAPMASTER INTERNATIONAL LLC
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Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT A



Nippon Express

d/b/a: ARROW INTERNATIONAL

WAYBILL

(COMBINED TRANSPORT DOCUMENT)

NON-NEGOTIABLE

Shipper:

HAMAI CO., LTD.
5-5-15, NISHI-BOTANDA, SHINAGAWA-KU
TOKYO, JAPAN

RESERVED: the goods in the container(s) or package(s) shall contain the cargo herein mentioned in apparent good order and condition unless otherwise indicated, to be transported and delivered or transhipped as herein provided.
The carrier, consignor, shipper, delivery and transhipping of the goods are subject to the terms and conditions on the face and back hereof, whether written, typed, stamped or printed.

Waybill Number
YOSF4451887

Consignee:

HAYWARD QUARTZ TECHNOLOGY, INC.
1700 CORPORATE WAY FREMONT, CA 94539
TEL: 510-657-9605

Export Reference:

Forwarding Agent Reference:

140083-4451887
YOSF 4451021 OTI LICENCE 016327N

Notify Party:

LAPMASTER INTERNATIONAL
501 W. ALGONQUIN ROAD MOUNT PROSPECT
IL 60056 USA
224-659-7101 224-659-7103

Point and Country of Origin
JAPAN

SHIPPER'S EXPRESS U.S.A. INC.
SAN FRANCISCO OCEAN CARGO BRANCH
250 UTAH AVENUE SOUTH SAN FRANCISCO
CA 94080 U.S.A.
PHONE: (650) 821-3100 FAX: (650) 952-0380

By carriage by:

Place of Receipt:

Ocean Vessel/Voy. No.
COSCO HONG KONG

Port of Loading
YOKOHAMA, JAPAN

Routing of Transportation:

Port of Discharge
OAKLAND, UNITED STATES

Place of Delivery
OAKLAND, CA, U.S.

Final Destination (for the Merchant's reference only):

Stacks and Numbers of Containers:

No. of Pallets or Containers:

SHIPPER'S LOAD & COUNT

4 CONTAINERS
7 CASES

FOURWAYTYPE PRECISION FLAT LAPPING MACHINE
FOURWAYTYPE PRECISION FLAT POLISHING MACHINE

Gross Weight:

45,010.00 KGS

Measurements:

115.371 M3

HIM-7880-1
LAPMASTER
28BF-L
OAKLAND
CASE NO. 1-4
MADE IN JAPAN

HIM-7880-2
LAPMASTER
28BF-P
OAKLAND
CASE NO. 1-3
MADE IN JAPAN

(CONTAINER NO.) (SEAL NO.)
AS PER ATTACHED SHEET

FREIGHT COLLECT AS ARRANGED.
SAY: FOUR (4) CONTAINERS ONLY.

846090810055 846090810055 846090810055 If Merchant enters a value, the Ad Valorem rate will be charged.

These commodities licensed by U.S. for ultimate destination:

Diversions contrary to U.S. Law prohibited

Freight & Charges:

R/T

FREIGHT COLLECT AS ARRANGED

Collect

Rate:

Y 109.7100

Prepaid at:

Total Prepaid in Yen

Destination:

No. of original Waybills:

ONE (1)

Place of Waybill Issue:

YOKOHAMA, JAPAN

Dated:

Dec-1 2007

IN WITNESS WHEREOF, the number of Waybills stated herein, all of the same tenor and date, has been signed.

AS CARRIER, NIPPON EXPRESS U.S.A. (ILLINOIS), INC.
NIPPON EXPRESS CO., LTD.

Laden on board the Vessel:

COSCO HONG KONG

Date:

Dec-1 2007

Port of Loading:

YOKOHAMA, JAPAN

By:

By: [Signature]

By: [Signature]

1. Unless otherwise set out on the face and back hereof, the Goods to be carried are subject to the terms and conditions provided for on the back of the Carrier's Bill of Lading and to the terms of Carrier's applicable tariff, both of which may be seen at the Carrier's office or at those of his authorized agents. Every reference therein to the words "Bill(s) of Lading" shall be read and construed as a reference to the words Non-Negotiable Waybill(s) and the terms and conditions thereof shall be read and construed accordingly, notwithstanding the Clause which requires a surrender of Bill(s) of Lading duly endorsed to the Carrier on delivery of the goods stated in NIPPON EXPRESS U.S.A. (ILLINOIS), INC. Combined Transport Bill of Lading.

In accepting this Waybill, the Shipper agrees to be bound by all stipulations, exceptions, terms and conditions on the face and back of this Waybill and the Carrier's Bill of Lading, whether written, typed, stamped or printed, as fully as if signed by the Shipper, any local custom or privilege to the contrary notwithstanding, and agrees that all agreement or freight engagement for and in connection with the carriage of the Goods are superseded by this Waybill.

2. Except as otherwise specifically provided in this Waybill, delivery of the Goods will be made only to the consignee named on the face hereof, or his authorized agents, on production of proof of identity. Notice of arrival of the goods will, in the absence of other instructions, be sent to the consignee or the person to be notified, by ordinary methods. The Carrier is not liable for non-receipt or delay in the dispatch of such notice.

3. (1) Should the Shipper require delivery elsewhere than the place of delivery or the port of discharge as shown on the face hereof and should written instructions be given by the Shipper to the Carrier or his agents, the Carrier may, at his discretion, deliver the Goods at the place elsewhere than at the place of delivery or the port of discharge as shown on the face hereof.

(2) Should the Consignee require delivery elsewhere than at the place of delivery or the port of discharge as shown on the face hereof and should written instructions given by the Consignee to the Carrier or his agents, the Carrier may, at his discretion, without any notice to the Shipper, deliver the Goods at the place elsewhere than the place of delivery or the port of discharge as shown on the face hereof.

(3) Should delivery be required to be made to a party other than that named as the Consignee, authorization must be given in writing by the Shipper to the Carrier or his agents.

EXHIBIT B

ITG TRANSPORTATION SERVICES, INC.

1500 EISENHOWER LANE, SUITE 100

LISLE, ILLINOIS 60532

TELEPHONE 630-725-4650 FAX 630-725-4699

AFTER 5:00P.M. AND WEEKENDS, PLEASE USE 24 HR EMERGENCY # 630-209-4649
PROFILE#: QUOTE #:

IMPORT DISPATCH

DATE: 12/21/07

ITG REF #: 8010284/85/86/88

BOOKING/BL#: COSU100083390

VENDOR NAME: MASON DIXON - Jose

VENDOR PH: 510-433-1020 FX 510-433-1025

SSL: COSCO

EQUIP: 2X40' STANDARD & 2 FLAT RACKS (IN GUAGE)

TOFC/COFC/SPEQ: TOFC

HAZ(Y/N): N

DEC ATTACHED (Y/N): N

UNIT (INITIAL & NUMBER): CBHU610576-2(40' STD) // CLHU373710-1 (20' STD) //

TRIU060411-1 (1X20' FLAT RACK) // TRIU063007-0 (1X20' FLAT RACK)

CHASSIS PICK UP: SSA TERM & COSCO

ORIGIN: SSA TERMINALS

RAIL PICKUP #: D/O ATTACHED

LFD: 12/21/07

CONTACT:

PHONE: 510-891-2922

1717 MIDDLE HARBOR ROAD

CNTR YARD - 510.238.4400

OAKLAND

CA

APPOINTMENT DATE: ** PLS PULL BOTH 1X20' STD & 1X40' STD TODAY 12/21 AND
DROP TODAY - ASAP //// PLS PULL BOTH FLAT RACKS ON WEDNESDAY 12/26 AND
DROP BY 1PM ****RIGGERS ARE HIRED FOR THE FLAT RACKS

DROP/LIVE (D/L): D

DEST: HAYWARD QUARTZ TECHNOLOGY LOAD REF:

CONTACT: RCVNG

PHONE: 510-657-9605

1700 CORPORATE WAY

FREMONT

CA

94539

EMPTY CNTR RETURN: SSA TERM & COSCO

c/o SSL: COSCO

CHASSIS RETURN: SSA TERM & COSCO

DRIVER MUST BE ON TIME!! ANY DELAYS MUST BE REPORTED TO ITG IMMEDIATELY!!!!!!
ITG WILL NOT BE RESPONSIBLE FOR ANY ACCESSORIALS NOT APPROVED AT TIME OF MOVE.
IF AFTER HOURS, PLEASE CALL THE 24 HOUR EMERGENCY NUMBER ABOVE.

DETENTION CHARGES REQUIRE SIGNED PROOF OF DELIVERY RECEIPT WITH IN/OUT TIMES.

CHASSIS-SPLIT CHARGES MUST BE BILLED DIRECTLY TO THE ABOVE STEAMSHIP LINE.

ANY DEVIATION FROM THIS WORK ORDER MUST BE AUTHORIZED BY ITG IN WRITING!

SENT BY: SHERRY X 4677

01/11/2008 12:24 5104331026

MDII OAK

PAGE 02

MASON DIXON INTERMODAL, INC.Inv #: **9470-009538-0**Appt. time: **ASA**

Oakland Terminal Stockton Terminal Fresno Terminal
 510-433-1020 209-941-0644 559-275-5400

Railroad PIU #:

SHIPPER:

CONSIGNEE/RECEIVER: Container Line: **COSCO****HAYWARD QUARTZ TECHNOLOGY****1700 CORPORATE WAY****FREMONT****510-657-9605**

DATE 12/27/2007	P.O.#	CONTR./TRAILER# TRIU 0604111	R/R OAKLAND
NO. OF PKGS. T/L	DESCRIPTION OF COMMODITIES F.A.K.		WEIGHT
<p>Appt #: SPOT LOCATION</p> <p>Appt Conf. #: Booking #</p> <p>Directions: 880S, EXIT MISSION BLVD<, WARM SPRINGS BLVD<, CORPORATE WAY></p>			

SEAL INTACT *

It is your obligation to notify dispatch when the trailer is available for pickup. MDII will not guarantee the pickup of an empty trailer on same day if not called in to dispatch before 2:30 p.m. This trailer is insured by an independent contractor/owner operator. The contractor is not an employee of MDII. MDII is not responsible for damages, losses, etc. that may occur at your property. Acceptance of this "Delivery Receipt" is your acknowledgment to hold harmless MDII for any damages, losses, etc., that may occur from the delivery or pickup of the trailer or container.

NOTICE: This is a use controlled trailer with limited "free time." You must accept delivery within 48 hours and release back to us within 48 hours if you are to avoid additional charges. Truckers are required to advance toll and excessive charges on your behalf and are permitted to recover these charges from you pursuant to Civil Code §2187. You may request our dispatch operations to have the driver stay with the load and will have to pay for any time in excess of two hours. If you request that our driver unload, you have no free time and will be billed for the services from the time of arrival until departure. Signature of your company representative on this receipt verifies the time and date of the trailer receipt, trailer and contents in good condition and seal intact; driver's time of arrival and departure, and acknowledges liability for all trucking and associated charges. Failure to pay billed charges will result in a lien on shipments including the costs of storage and appropriate security pursuant to Civil Code §3051.5.

DELIVERED BY	DATE	TIME IN	TIME OUT	RECEIVED IN GOOD ORDER BY CONSIGNEE	DATE
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These charges include (1) fees to pay for regulation of transportation companies by the California Public Utilities Commission and (2) taxes paid to California cities instead of excise or business license taxes they could otherwise impose.

I.C.C. AND P.U.C. REQUIRE PAYMENT OF FREIGHT CHARGES WITHIN SEVEN DAYS.

Jguajardo

01/11/2008 12:24 5104331026

MDII OAK

PAGE 03

MASON DIXON INTERMODAL, INC.Inv #: **9470-009539-8** **ASA**
Appt. time:Oakland Terminal Stockton Terminal Fresno Terminal
510-433-1020 209-941-0644 559-275-5400

Railroad P/U #:

SHIPPER:

CONSIGNEE/RECEIVER: Container Line: **COSCO****HAYWARD QUARTZ TECHNOLOGY****1700 CORPORATE WAY****FREMONT****510-657-9605**

DATE 12/27/2007	P.O.#	CONTR./TRAILER# TRIU 0630070	R/R OAKLAND
NO. OF PKGS. T/L	DESCRIPTION OF COMMODITIES F.A.K.		WEIGHT
Appt #: SPOT LOCATION Appt Conf. #: Booking # Directions: 880S, EXIT MISSION BLVD<, WARM SPRINGS BLVD<, CORPORATE WAY>			

SEAL INTACT # _____

It is your obligation to notify dispatch when the order is available for pickup. MDII will not guarantee the pickup of an empty trailer on same day if not called in to dispatch before 2:00 p.m. This trailer is loaded by an independent contractor/driver/operator. The contractor is not an employee of MDII. MDII is not responsible for damages, losses, etc. that may occur on your property. Acceptance of this "Delivery Receipt" is your acknowledgment to hold harmless MDII for any damages, losses, etc. that may occur from the delivery or pickup of this trailer or container.

NOTICE: This is a use controlled trailer with limited "free time." You must accept delivery within 48 hours and release back to us within 48 hours. If you are to avoid additional charges. Truckers are required to advance rail and steamship charges on your behalf and are permitted to recover these charges from you pursuant to Civil Code 62187. You may request our dispatch operations to have the driver stay with the load and will have to pay for every "time in excess" of two hours. If you request that our driver unload, you have no "free time" and will be billed for his services from the time of arrival until departure. Signature of your company representative on this receipt verifies the time and date of the trailer receipt trailer and contents in good condition and seal intact; driver's time of arrival and departure, and acknowledges liability for all loading and associated charges. Failure to pay billed charges will result in a lien on shipments including the costs of storage and appropriate security pursuant to Civil Code 52051.5.

DELIVERED BY	DATE	TIME IN	TIME OUT	RECEIVED IN GOOD ORDER BY CONSIGNEE	DATE
--------------	------	---------	----------	-------------------------------------	------

Jgualardo

These charges include (1) fees to pay for regulation of transportation companies by the California Public Utilities Commission and (2) taxes paid to California cities instead of excise or business license taxes they could otherwise impose.
I.C.C. AND P.U.C. REQUIRE PAYMENT OF FREIGHT CHARGES WITHIN SEVEN DAYS.

Re: *Mason and Dixon Intermodal, Inc. v. Lapmastere International, LLC*
 United States District Court – Northern District No. CV 08 1232 MEJ

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On April 23, 2008, I served the within documents:

ANSWER OF DEFENDANT LAPMASTER INTERNATIONAL LLC TO MASON & DIXON INTERMODAL, INC.'S COMPLAINT FOR DECLARATORY JUDGMENT; AND LAPMASTER INTERNATIONAL LCC'S COUNTERCLAIMS AGAINST MASON & DIXON INTERMODAL, INC; DEMAND FOR JURY TRIAL

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- ☒ by electronically serving the document(s) described above via United States District Court Electronic Case Filing website on the recipients designated on the electronic service list that is located on the Pacer website and as set forth below:

Attorneys for Plaintiff

Matthew S. Conant
 Vincent Castillo
 Lombardi Loper & Conant LLP
 Lake Merritt Plaza
 1999 Harrison Street, Suite 2600
 Oakland, CA 94612
 Tele: 510.433.2600
 Fax: 510.433.2699

Attorneys for Plaintiff

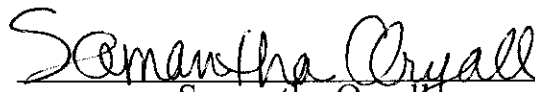
Paul D. Keenan
 Jeffrey D. Cohen
 Keenan Cohen & Howard PC
 One Pitcairn Place
 165 Township Line Road, Suite 2400
 Philadelphia, PA 19046
 Tele: 215.609.1110
 Fax: 215.609.1117

Attorneys for Hartford Fire Ins. Co.

Christopher J. Brennan
 Bauman Loewe Witt & Maxwell, PLLC
 8765 E. Bell Road, Suite 204
 Scottsdale, Arizona 85260
 Tele: 480.502.4664
 Fax: 480.502.4774

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 23, 2008, at San Francisco, California.


 Samantha Oryall

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111

1 JOHN F. HUGHES (SBN 111638)

GORDON & REES LLP

2 275 Battery Street, 20th Floor

San Francisco, CA 94111

3 Telephone: (415) 986.5900

4 Facsimile: (415) 986.8054

Attorneys for Defendant and Counterclaimant

5 And Third-Party Plaintiff

LAPMASTER INTERNATIONAL LLC

7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10 MASON AND DIXON INTERMODAL,
INC.,

11 Plaintiff,

12 v.

13 LAPMASTER INTERNATIONAL LLC
and HARTFORD INSURANCE CO.

14 Defendants.

15 LAPMASTER INTERNATIONAL, LLC,

16 Counterclaimant,

17 v.

18 MASON AND DIXON INTERMODAL,
INC.

19 Counterclaimant.

20 HARTFORD FIRE INSURANCE
COMPANY, individually and as subrogee
of Lapmaster International, LLC.,

21 Third-Party Plaintiff,

22 v.

23 ITG TRANSPORTATION SERVICES,
INC.; WORLD EXPRESS SHIPPING,
TRANSPORTATION AND
24 FORWARDING SERVICES, INC. d/b/a/
W.E.S.T. FORWARDING SERVICES;
25 DOES 1 through X, inclusive,

26 Third-Party Defendants.

27 AND RELATED CROSS-ACTIONS.

Case No. CV-08-1232-MEJ

**LAPMASTER
INTERNATIONAL LLC's
THIRD-PARTY COMPLAINT**

DEMAND FOR JURY TRIAL

Gordon & Rees LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 Third-Party Plaintiff LAPMASTER INTERNATIONAL LLC
2 (“LAPMASTER” or “Third-Party Plaintiff”), comes now for its Third-Party
3 Complaint against Third-Party Defendants, and each of them, and alleges as
4 follows

5 **JURISDICTION AND VENUE**

6 1. Lapmaster’s Third-Party Complaint is based on Rule 14, 19, and 20 of
7 the Federal Rules of Civil Procedure. This Court has jurisdiction over the claims
8 for declaratory relief under 28 U.S.C. § 2201. This Court also has supplemental
9 jurisdiction over Lapmaster’s State law claims against ITG TRANSPORTATION
10 SERVICES, INC. (“ITG”) and WORLD EXPRESS SHIPPING,
11 TRANSPORTATION AND FORWARDING SERVICES, INC. d/b/a W.E.S.T.
12 FORWARDING SERVICES (“West Forwarding”) because these claims result
13 from a common nucleus of operative facts and relate to the federal claims alleged
14 in the Complaint of Mason and Dixon Intermodal, Inc. (“MDII”) and
15 Counterclaims of Lapmaster.

16 2. Venue is proper in the Northern District of California pursuant to 28
17 U.S.C. § 1391(b), in that the port of arrival of the cargo shipment was Oakland,
18 California, within this Judicial District, and further, that the ground transportation
19 of the Machines, and damage to the Machines, also occurred in this District.

20 3. As alleged above, the port of arrival and the interchange of equipment
21 occurred in Oakland, California. This action is therefore properly assigned in the
22 San Francisco or Oakland Division of this Court.

23 **PARTIES:**

24 4. Lapmaster International, LLC is, and was at all relevant times, an
25 Illinois corporation with its principal place of business in Mount Prospect, Illinois.

26 5. Lapmaster is informed and believes and on that basis alleges that
27 Third-Party Defendant ITG’s is, and was at all relevant times, an Illinois
28 corporation, with its principal place of business in Illinois.

6. Lapmaster is informed and believes and on that basis alleges that Third-Party Defendant West Forwarding is, and was at all relevant times, an Ohio corporation, with its principal place of business in Ohio.

7. The true names or capacities of Does I through X are presently unknown to Lapmaster, which therefore sues them by fictitious names. Lapmaster is informed and believes and on that basis alleges that each of the Doe Third-Party Defendants is responsible under federal law, federal or State common law, or in some other manner for the cargo damage and other damages, losses and expenses referred to in this Complaint. Lapmaster is further informed and believes and on that basis alleges that the conduct of each fictitiously named Third-Party Defendant proximately caused or contributed to such damages and losses. Lapmaster will amend its Third-Party Complaint to allege the true names and capacities of the Doe Defendants when ascertained.

8. Each of the Third-Party Defendants, including the Doe Defendants, was at all relevant times acting as the agent, employee, principal, joint venturer, or partner of such other Third-Party Defendants, as well as Counter-Defendant, and at all relevant times, was acting within the course and scope of such relationship.

GENERAL ALLEGATIONS

9. Lapmaster sold a Precision Flat Lapping Machine and a Precision Flat Polishing Machine ("the Machines") to Hayward Quartz Technology, Inc.

10. The Machines were shipped from Japan by Hamai Co., Ltd. See Exhibit A.

11. The Machines were transported by Ocean Vessel Casco Hong Kong from the Port of Yokohama, Japan pursuant to Waybill No. Y05F4451887 and other documents (collectively, the "agreements"). A true and correct copy of Waybill No. Y05F4451887 is attached as Exhibit A and is incorporated by reference.

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San Francisco, CA 94111

1 12. The Machines were transported from Japan to the Port of Oakland,
2 California.

3 13. At Oakland, California, Lapmaster is informed and believes and on
4 that basis alleges that ITG and West Forwarding arranged for motor transport of
5 the Machines from Oakland to Fremont, California.

6 14. The Waybill (Exhibit A) is not a through bill of lading and was not
7 intended to cover the ground transportation of the Machines. The Waybill did not
8 identify MDII, made no reference to a ground transportation carrier, and made no
9 reference to the delivery of the Machines from the Port of Oakland to Fremont,
10 California.

11 15. On or about December 26, 2007, MDII picked up the Machines at the
12 Port of Oakland and began transporting the same to Fremont, California. See
13 Import Dispatch, a true and correct copy of which is attached as Exhibit B and
14 incorporated by reference.

15 16. On or about December 26 and 27, 2007, MDII negligently, carelessly
16 and recklessly operated and drove their tractor trailer trucks so as to cause the
17 tractor trailer trucks and Machines, as cargo, to collide on two separate occasions
18 with certain overpasses on Interstate 880 in California.

19 17. The negligent, careless and reckless operation of the tractor trailer
20 trucks and carriage of the cargo by MDII and its agents proximately caused
21 damage to the Machines, and other damages, losses and expenses.

22 18. Hartford Fire Insurance Company issued an insurance policy to its
23 insured Lapmaster under policy number 83 UUQ RZ2879.

24 19. As a result of the collision causing damage to the Machines,
25 Lapmaster filed a claim for loss under the policy with Hartford.

26 20. However, not all of Lapmaster's losses, claims, costs, expenses or
27 damages (past and prospective) were covered or otherwise paid by Hartford, as a
28 result of which, Lapmaster has not yet been made whole for the losses suffered or

1 to be incurred as a result of the negligent, careless, reckless conduct and breaches
2 by Third-Party Defendants, as well as Counter-Defendant.

3 21. As a result of the collision, Lapmaster incurred unreimbursed costs,
4 losses, expenses and damages, both direct and indirect, past and prospective, in
5 amounts to be proven at trial.

6 22. In addition to the amounts paid out under the policy, Lapmaster seeks
7 recovery of prejudgment interest on the liquidated damages to the extent allowed
8 pursuant to California law, including California Civil Code §§ 3287 and 3288.

9
10 **FIRST CAUSE OF ACTION**
(Declaratory Relief)

11 23. Lapmaster incorporates by reference each of its allegation in
12 Paragraphs 1 through 25, above.

13 24. An actual controversy has arisen and now exists between Lapmaster
14 and Third-Party Defendants ITG and West Forwarding regarding their respective
15 rights and duties under the agreements referred to above for carriage of the
16 Machines.

17 25. Lapmaster contends, and Third-Party Defendants deny, that
18 Lapmaster is entitled to compensation from Third-Party Defendants under the
19 agreements for all cargo damage or destroyed. Lapmaster further contends, and
20 Third-Party Defendants deny, that Third-Party Defendants are liable under the
21 written agreements, general maritime law, and the law of indemnity and
22 contribution, for other damages, losses and expenses incurred by Lapmaster and its
23 insured. Lapmaster requests the following specific relief:

24 (A) A declaration that Third-Party Defendants are liable for all damage to
25 the Machines;

26 (B) That Third-Party Defendants are legally responsible for the other
27 damages, losses and expenses incurred by Lapmaster as set forth herein;
28

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San Francisco, CA 94111

1 (C) That Third-Party Defendants are legally responsible for such cargo
2 damage and other damages, losses and expenses under the written agreements;

3 (D) That Third-Party Defendants are liable under general maritime and the
4 law of indemnity and contribution for the cargo damage and other damages, losses
5 and expenses referred to above; and

6 (E) That Lapmaster is entitled to recover attorneys' fees and costs from
7 Third-Party Defendants incurred in Lapmaster's defense of MDII's action and in
8 prosecuting the Third-Party action.

9 26. Such a declaration is necessary and appropriate at this time, so that the
10 parties may ascertain their respective rights and duties and avoid a multiplicity of
11 actions.

12
13 **SECOND CAUSE OF ACTION**
14 **(Breach of Contract)**

15 27. Lapmaster incorporates by reference each of its allegations in
16 Paragraphs above.

17 28. Third-Party Defendants hired, retained, recommended and entrusted
18 MDII to carefully, safely, and properly pickup the Machines from the Port of
19 Oakland and deliver to Fremont, California.

20 29. MDII, and its drivers or employees, was hired and retained by Third-
21 Party Defendants, and were at all relevant times the agents or subagents of Third-
22 Party Defendants.

23 30. Third-Party Defendants, through their own conduct and/or the conduct
24 of its agents or subagents, caused damage to the Machines, and in so doing,
25 breached the agreements referred to above. Lapmaster is informed and believes
26 and on that basis alleges that the contracts include commitments by Third-Party
27 Defendants which were part of the contract of carriage and/or were intended to
28 benefit Lapmaster.

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San Francisco, CA 94111

1 31. Third-Party Defendants knew, or should have known, the value of the
2 Machines.

3 32. Third-Party Defendants were required to, but failed to, hire, retained,
4 recommend, and/or entrust the Machines to carriers and/or agents that were
5 reputable, reliable, safe, knowledgeable, and whom would comply with generally
6 accepted trucking standards and applicable laws and regulations.

7 33. Third-Party Defendants were required to, yet failed to, ensure that the
8 motor carrier it retained and/or recommended contained all the appropriate and
9 necessary information about the Machines and any specialized instructions
10 regarding the cargo and its delivery.

11 34. Third-Party Defendants were required to, yet failed to, ensure that
12 Lapmaster was properly protected in the event of damage to the Machines during
13 their transport, whether caused by its motor carrier or agent, to include but not
14 limited to procure or bind insurance coverage it quoted Lapmaster.

15 35. Lapmaster performed all terms and conditions of the contracts
16 required on its part. Lapmaster is informed and believes and on that basis alleges
17 that the damages and losses alleged above were caused by MDII, as motor carrier
18 and/or by Third-Party Defendants and their agents and subagents.

19 36. Third-Party Defendants' breach of the contracts, through its own
20 conduct and/or the conduct of its agents and subagents, has proximately caused
21 damage to Lapmaster in the form of damage to the Machines and other damages,
22 losses and expenses, past and prospective, in an amount subject to proof at trial.

23
24 **THIRD CAUSE OF ACTION**
 (Implied Indemnity)

25 37. Third-Party Plaintiff incorporates by reference each of its allegations
26 in the Paragraphs above.

27 38. Lapmaster is informed and believes and on that basis alleges that they
28 are entitled to implied indemnity, based on the agreements referred to above and

1 principles of maritime and federal common law. A right to indemnity for the
2 damages, losses and expenses is implied, if not expressed, in the terms of the
3 agreements between the parties.

4
5 **FOURTH CAUSE OF ACTION**
6 (Negligence)

7 39. Third-Party Plaintiff incorporates by reference each of their
8 allegations in Paragraphs above.

9 40. Third-Party Defendants hired, retained, recommended and entrusted
10 MDII to carefully, safely, and properly pickup the Machines from the Port of
11 Oakland and deliver to Fremont, California.

12 41. MDII, and its drivers or employees, were at all relevant times the
13 agents or subagents of Third-Party Defendants.

14 42. Third-Party Defendants owed a duty to ensure that its carriers and
15 agents are reputable, reliable, safe, knowledgeable, and comply with generally
16 accepted trucking standards and applicable laws and regulations.

17 43. Third-Party Defendants further had a duty to ensure that the motor
18 carrier it retained and/recommended contained all the appropriate and necessary
19 information about the Machines and any specialized instructions regarding the
20 cargo and its delivery.

21 44. Third-Party Defendants had a further duty to ensure that Lapmaster
22 was properly protected in the event of damage to the Machines during their
23 transport, whether caused by its motor carrier or agent.

24 45. Third-Party Defendants breached their duties by failing to retained,
25 assign, recommend, or hire a reputable, reliable, safe, knowledgeable motor carrier
26 who would comply with generally accepted trucking standards and applicable laws
27 and regulations.

28 46. Third-Party Defendants breached their duties by failing to ensure that
the motor carrier it retained and/recommended obtained and followed all the

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San Francisco, CA 94111

1 appropriate and necessary information about the Machines and any specialized
2 instructions regarding the cargo and its delivery.

3 47. Third-Party Defendants breached their duties by failing to ensure that
4 Lapmaster was properly protected in the event of damage to the Machines during
5 their transport, whether caused by its motor carrier or agent, and for failing to
6 bind/procure appropriate insurance despite quoting Lapmaster for the same.

7 48. Third-Party Defendants breached their duties by allowing the second
8 truck to follow the same route as the first truck after it had crashed into the
9 overpass in Oakland, California, resulting in the same fate to the Machine being
10 transported by the second truck.

11 49. Third-Party Defendants' breach proximately caused the damages
12 claimed and outlined herein in an amount to be proven at trial.

13 **FIFTH CAUSE OF ACTION**

14 (Negligent Interference with Prospective Economic Advantage against
15 All Third Party Defendants)

16 50. Third-Party Plaintiff incorporates by reference each of their
17 allegations in Paragraphs above.

18 51. Prior to and during all time relevant herein, Third-Party Defendant
19 was aware that Third-Party Plaintiff had existing economic relations with third
20 parties, including but not limited to its customer Hayward Quartz which had
21 purchased the Machines that were being transported at the time they were damaged
22 and destroyed as a result of the negligence of Third-Party Defendants, and that
23 Third-Party Plaintiff also had increased reputation and goodwill in the relevant
24 community.

25 52. Third-Party Defendants knew or should have known that their
26 conduct, as alleged above, would interfere with and disrupt these relationships.

27 53. As a proximate result of Third-Party Defendants' conduct, Third-
28 Party Plaintiff's relationship with its customers, including but not limited to
Hayward Quartz, has been, or is expected to be interfered with and/or disrupted,

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1 causing loss of income, reputation, goodwill, and other damages to Third-Party
2 Plaintiff.

3 WHEREFORE Third-Party Plaintiff prays for judgment and relief as set
4 forth below:

5 A. For a declaration that the Third-Party Defendants are liable,
6 contractually and otherwise, for all damage to the Machines and all damages
7 incurred or to be incurred by Lapmaster; and that the Third-Party Defendants are
8 liable for indemnity, contribution and attorney's fees.

9 B. For the amount of damages resulting the accident involving the
10 Machines and not previously compensated by Hartford, and including both direct
11 and indirect, as well as past and prospective, losses, costs and expenses and as
12 proven at trial;

13 C. For costs and attorneys fees permitted by law;

14 D. For prejudgment interest as permitted by law, including, but not
15 limited to, California Civil Codes §§ 3287 and 3288; and

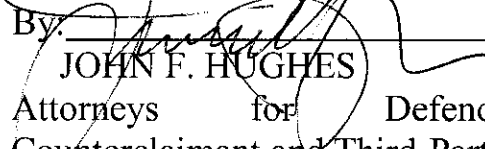
16 E. For such other relief as this Court deems just and fair.

17 **DEMAND FOR JURY TRIAL ON THIRD-PARTY CLAIMS**

18 Lapmaster hereby demands a jury trial on all Third-Party Claims for which
19 jury trial is allowed by law.

20
21 DATED: April 22, 2008

GORDON & REES LLP

22
23 By: 
24 JOHN F. HUGHES
25 Attorneys for Defendant and
26 Counterclaimant and Third-Party Plaintiff
27 LAPMASTER INTERNATIONAL LLC
28

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275 Battery Street, Suite 2000
San Francisco, CA 94111

EXHIBIT A



Nippon Express
J.B. Arrow International

WAYBILL

(COMBINED TRANSPORT DOCUMENT)
NON-NEGOTIABLE

Shipper: HAMAI CO., LTD. 5-5-15, NISHI-GOTANDA, SHINAGAWA-KU TOKYO, JAPAN		RECEIVED the goods in the container(s) or package(s) and to contain the cargo herein mentioned in apparent good order and condition unless otherwise indicated, to be transported and delivered as shipped by herein provided. The receipt, custody, carriage, delivery and transportation of the goods are subject to the terms and conditions on the face and back hereof, whether written, typed, stamped or printed.	
Waybill Number: YOSF4451887			
Consignee: HAYWARD QUARTZ TECHNOLOGY, INC. 1700 CORPORATE WAY FREMONT, CA94539 TEL: 510-657-9605		Export Reference: YOSF 4451921 OTI LICENCE 016327N	
Notify Party: LAPMASTER INTERNATIONAL 501 W. ALCONQUIN ROAD MOUNT PROSPECT IL 60056 USA 224-659-7101 224-659-7103		Point and Country of Origin: JAPAN	
Re-carriage by:		For Cargo Release Contact: NIPPON EXPRESS U.S.A., INC. SAN FRANCISCO OCEAN CARGO BRANCH 250 UTAH AVENUE SOUTH SAN FRANCISCO CA 94080 U.S.A. PHONE: (650) 827-3100 FAX: (650) 952-0380	
Place of Receipt: YOKOHAMA, CY		Routing of Transportation:	
Vessel/Voy. No.: COSCO HONG KONG		Port of Loading: YOKOHAMA, JAPAN	
Port of Discharge: OAKLAND, UNITED STATES		Final Destination (for the Merchant's reference only):	
Place of Delivery: OAKLAND, CA, CY			

Stacks and Stowage Container No. and Seal No.	No. of Pkgs or Containers	Particulars Furnished by Shipper Description of Packages and Goods Type or Kind of Packages or Containers	Gross Weight	Measurement
HIM-7880-1 LAPMASTER 28BF-L OAKLAND CASE NO. 1-4 MADE IN JAPAN	4 CONTAINERS	SHIPPER'S LOAD & COUNT FOURWAYTYPE PRECISION FLAT LAPPING MACHINE	45,010.00 KGS	115.371 M3
HIM-7880-2 LAPMASTER 28BF-P OAKLAND CASE NO. 1-3 MADE IN JAPAN	7 CASES	FOURWAYTYPE PRECISION FLAT POLISHING MACHINE		

(CONTAINER NO) (SEAL NO)
AS PER ATTACHED SHEET

FREIGHT COLLECT AS ARRANGED.
SAY: FOUR (4) CONTAINERS ONLY.

846090810055 846090810055 846090810053 If Merchant enters a value, the Ad Valorem rate will be charged. These commodities licensed by U.S. for ultimate destination: Diversion contrary to U.S. Law prohibited	
Freight & Charges: Prepaid at: DESTINATION Total Prepaid in Yen: 109,7100	R/T: FREIGHT COLLECT AS ARRANGED
Place of Waybill Issue: YOKOHAMA, JAPAN Dated: Dec-1 2007	No. of original Waybills: ONE (1)
IN WITNESS WHEREOF, the number of Waybills stated herein, all of the same tenor and date, has been signed, AS CARRIER, NIPPON EXPRESS U.S.A. (ILLINOIS), INC. NIPPON EXPRESS CO., LTD.	
Laden on board the Vessel: COSCO HONG KONG Date: Dec-1 2007 By:	By:

1. Unless otherwise set out on the face and back hereof, the Goods to be carried are subject to the terms and conditions provided for on the back of the Carrier's Bill of Lading and to the terms of Carrier's applicable tariff, both of which may be seen at the Carrier's office or at those of his authorized agents. Every reference therein to the words "Bill(s) of Lading" shall be read and construed as a reference to the words Non-Negotiable Waybill(s) and the terms and conditions thereof shall be read and construed accordingly, notwithstanding the Clause which requires a surrender of Bill(s) of Lading duly endorsed to the Carrier on delivery of the goods stated in NIPPON EXPRESS U.S.A. (ILLINOIS), INC. Combined Transport Bill of Lading.

In accepting this Waybill, the Shipper agrees to be bound by all stipulations, exceptions, terms and conditions on the face and back of this Waybill and the Carrier's Bill of Lading, whether written, typed, stamped or printed, as fully as if signed by the Shipper, any local custom or privilege to the contrary notwithstanding, and agrees that all agreement or freight engagement for and in connection with the carriage of the Goods are superseded by this Waybill.

2. Except as otherwise specifically provided in this Waybill, delivery of the Goods will be made only to the consignee named on the face hereof, or his authorized agents, on production of proof of identity. Notice of arrival of the goods will, in the absence of other instructions, be sent to the consignee or the person to be notified, by ordinary methods. The Carrier is not liable for non-receipt or delay in the dispatch of such notice.

3. (1) Should the Shipper require delivery elsewhere than the place of delivery or the port of discharge as shown on the face hereof and should written instructions be given by the Shipper to the Carrier or his agents, the Carrier may, at his discretion, deliver the Goods at the place elsewhere than at the place of delivery or the port of discharge as shown on the face hereof.

(2) Should the Consignee require delivery elsewhere than at the place of delivery or the port of discharge as shown on the face hereof and should written instructions given by the Consignee to the Carrier or his agents, the Carrier may, at his discretion, without any notice to the Shipper, deliver the Goods at the place elsewhere than the place of delivery or the port of discharge as shown on the face hereof.

(3) Should delivery be required to be made to a party other than that named as the Consignee, authorization must be given in writing by the Shipper to the Carrier or his agents.

EXHIBIT B

ITG TRANSPORTATION SERVICES, INC.

1500 EISENHOWER LANE, SUITE 100

LISLE, ILLINOIS 60532

TELEPHONE 630-725-4650 FAX 630-725-4699

AFTER 5:00P.M. AND WEEKENDS, PLEASE USE 24 HR EMERGENCY # 630-209-4649

PROFILE#:

QUOTE #:

IMPORT DISPATCH

DATE: 12/21/07

ITG REF #: 8010284/85/86/88

BOOKING/BL#: COSU100083390

VENDOR NAME: MASON DIXON - *Jose*

VENDOR PH: *510-433-1020* FX *510-433-1025*

SSL: COSCO

EQUIP: 2X40' STANDARD & 2 FLAT RACKS (IN GUAGE)

TOFC/COFC/SPEQ: TOFC

HAZ(Y/N): N

DEC ATTACHED (Y/N): N

UNIT (INITIAL & NUMBER): CBHU610576-2 (40' STD) // CLHU373710-1 (20' STD) // TRIU060411-1 (1X20' FLAT RACK) // TRIU063007-0 (1X20' FLAT RACK)

CHASSIS PICK UP: SSA TERM & COSCO

ORIGIN: SSA TERMINALS

RAIL PICKUP #: D/O ATTACHED

LPD: 12/21/07

CONTACT:

1717 MIDDLE HARBOR ROAD
CNTR YARD - 510.238.4400
OAKLAND CA

PHONE: 510-891-2922

APPOINTMENT DATE: ** PLS PULL BOTH 1X20' STD & 1X40' STD TODAY 12/21 AND DROP TODAY - ASAP //// PLS PULL BOTH FLAT RACKS ON WEDNESDAY 12/26 AND DROP BY 1PM ***RIGGERS ARE HIRED FOR THE FLAT RACKS

DROP/LIVE (D/L): D

DEST: HAYWARD QUARTZ TECHNOLOGY LOAD REF:

CONTACT: RCVNG

PHONE: 510-657-9605

1700 CORPORATE WAY

FREMONT

CA 94539

EMPTY CNTR RETURN: SSA TERM & COSCO

c/o SSL: COSCO

CHASSIS RETURN: SSA TERM & COSCO

DRIVER MUST BE ON TIME!! ANY DELAYS MUST BE REPORTED TO ITG IMMEDIATELY!!!!
ITG WILL NOT BE RESPONSIBLE FOR ANY ACCESSORIALS NOT APPROVED AT TIME OF MOVE.
IF AFTER HOURS, PLEASE CALL THE 24 HOUR EMERGENCY NUMBER ABOVE.

DETENTION CHARGES REQUIRE SIGNED PROOF OF DELIVERY RECEIPT WITH IN/OUT TIMES.

CHASSIS SPLIT CHARGES MUST BE BILLED DIRECTLY TO THE ABOVE STEAMSHIP LINE.

ANY DEVIATION FROM THIS WORK ORDER MUST BE AUTHORIZED BY ITG IN WRITING!

SENT BY: SHERRY X 4677

01/11/2008 12:24 5104331025

MDII OAK

PAGE 02

MASON DIXON INTERMODAL, INC.Inv #: **9470-009538-0**
Appl. time: **ASA**Oakland Terminal Stockton Terminal Fresno Terminal
510-433-1020 209-941-0644 559-275-3400

Railroad PIU #:

SHIPPER:

CONSIGNEE/RECEIVER: Container Line: **COSCO****HAYWARD QUARTZ TECHNOLOGY****1700 CORPORATE WAY****FREMONT****510-657-9605**

DATE	P.O.#	CONTR./TRAILER#	R/R
12/27/2007		TRIU 0604111	OAKLAND
NO. OF PKGS.	DESCRIPTION OF COMMODITIES		WEIGHT
T/L	F.A.K.		
	Appt #:	SPOT LOCATION	
	Appt Conf. #:	Booking #	
	Directions: 880S, EXIT MISSION BLVD<, WARM SPRINGS BLVD<, CORPORATE WAY>		

SEAL INTACT #

It is your obligation to notify dispatch when the trailer is available for pickup. MDII will not guarantee the pickup of an empty trailer on same day if not called in to dispatch before 2:30 p.m. This trailer is hauled by an independent contractor/owner operator. The contractor is not an employee of MDII. MDII is not responsible for damages, losses, etc. that may occur on your property. Acceptance of this "Delivery Receipt" is your acknowledgment to hold harmless MDII for any damages, losses, etc. that may occur from the delivery or pickup of this trailer or container.

NOTICE: This is a use controlled trailer with limited "free time." You must accept delivery within 48 hours and release back to us within 48 hours if you are to avoid additional charges. Truckers are required to advance call and steamship charges on your behalf and are permitted to recover these charges from you pursuant to Civil Code §2187. You may request our dispatch operations to have the driver stay with the load and will have to pay for any time in excess of two hours. If you request that our driver unload, you have no free time and will be billed for his services from the time of arrival until departure. Signature of your company representative on this receipt verifies the time and date of the trailer receipt, trailer and contents in good condition and seal intact, driver's time of arrival and departure, and acknowledges liability for all trucking and associated charges. Failure to pay billed charges will result in a lien on shipments including the costs of storage and appropriate security pursuant to Civil Code §3051.5.

DELIVERED BY	DATE	TIME IN	TIME OUT	RECEIVED IN GOOD ORDER BY CONSIGNEE	DATE

These charges include (1) fees to pay for regulation of transportation companies by the California Public Utilities Commission and (2) taxes paid to California cities instead of excise or business license taxes they could otherwise impose.

I.C.C. AND P.U.C. REQUIRE PAYMENT OF FREIGHT CHARGES WITHIN SEVEN DAYS.

jguajardo

01/11/2008 12:24 5104331025

MDII DAK

PAGE 03

MASON DIXON INTERMODAL, INC.Inv #: **9470-009539-8**Appt. time: **ASA**

Oakland Terminal 510-433-1020
 Stockton Terminal 209-941-0644
 Fresno Terminal 559-275-5400

Railroad P/U #:

SHIPPER:

CONSIGNEE/RECEIVER: **Container Line: COSCO****HAYWARD QUARTZ TECHNOLOGY****1700 CORPORATE WAY****FREMONT****510-657-9605**

DATE 12/27/2007	P.O.#	CONTR./TRAILER# TRIU 0630070	R/R OAKLAND
NO. OF PKGS.	DESCRIPTION OF COMMODITIES		WEIGHT
T/L	F.A.K.		
	Appt #:	SPOT LOCATION	
	Appt Conf. #:	Booking #	
Directions: 880S, EXIT MISSION BLVD<, WARM SPRINGS BLVD<, CORPORATE WAY>			

SEAL INTACT #

It is your obligation to notify dispatch when the trailer is available for pickup. MDII will not guarantee the pickup of an empty trailer on same day if not called in to dispatch before 2:00 p.m. This trailer is hauled by an independent contractor/owner operator. The contractor is not an employee of MDII. MDII is not responsible for damages, losses, etc. that may occur on your property. Acceptance of this "Delivery Receipt" is your acknowledgment to hold harmless MDII for any damages, losses, etc. that may occur from the delivery or pickup of this trailer or container.

NOTICE: This is a use controlled trailer with limited "free time". You must accept delivery within 48 hours and release back to us within 48 hours if you are to avoid additional charges. Truckers are required to advance rail and steamship charges on your behalf and are permitted to recover these charges from you pursuant to Civil Code 52107. You may request our dispatch operations to have the driver stay with the load and will have to pay for any time "in excess" of two hours. If you request that our driver unload, you have no free time and will be billed for his services from the time of arrival until departure. Signature of your company representative on this receipt verifies the time and date of the trailer receipt, trailer and contents in good condition and seal intact, driver's time of arrival and departure, and acknowledges liability for all trucking and associated charges. Failure to pay billed charges will result in a lien on shipments including the costs of storage and appropriate security pursuant to Civil Code 52051.5.

DELIVERED BY	DATE	TIME IN	TIME OUT	RECEIVED IN GOOD ORDER BY CONSIGNEE	DATE
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[signature]

*These charges include (1) fees to pay for regulation of transportation companies by the California Public Utilities Commission and (2) taxes paid to California cities instead of excise or business license taxes they could otherwise impose.
I.C.C. AND P.U.C. REQUIRE PAYMENT OF FREIGHT CHARGES WITHIN SEVEN DAYS.

Re: *Mason and Dixon Intermodal, Inc. v. Lapmastere International, LLC*
 United States District Court – Northern District No. CV 08 1232 MEJ

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On April 23, 2008, I served the within documents:

LAPMASTER INTERNATIONAL LLC'S THIRD-PARTY COMPLAINT; DEMAND FOR JURY TRIAL

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- ☒ by electronically serving the document(s) described above via United States District Court Electronic Case Filing website on the recipients designated on the electronic service list that is located on the Pacer website and as set forth below:

Attorneys for Plaintiff

Matthew S. Conant
 Vincent Castillo
 Lombardi Loper & Conant LLP
 Lake Merritt Plaza
 1999 Harrison Street, Suite 2600
 Oakland, CA 94612
 Tele: 510.433.2600
 Fax: 510.433.2699

Attorneys for Plaintiff

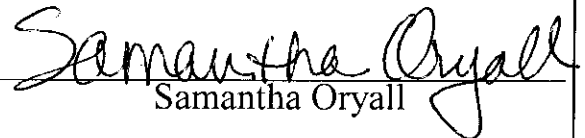
Paul D. Keenan
 Jeffrey D. Cohen
 Keenan Cohen & Howard PC
 One Pitcairn Place
 165 Township Line Road, Suite 2400
 Philadelphia, PA 19046
 Tele: 215.609.1110
 Fax: 215.609.1117

Attorneys for Hartford Fire Ins. Co.

Christopher J. Brennan
 Bauman Loewe Witt & Maxwell, PLLC
 8765 E. Bell Road, Suite 204
 Scottsdale, Arizona 85260
 Tele: 480.502.4664
 Fax: 480.502.4774

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 23, 2008, at San Francisco, California.


 Samantha Oryall

Gordon & Rees LLP
 275 Battery Street, Suite 2000
 San Francisco, CA 94111